

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

STEPHEN LYNN WOODS,
Petitioner,

v.

Case No. 10-C-0581

JOHN PAQUIN, Warden,
Racine Correctional Institution,
Respondent.

ORDER

On July 13, 2010, Stephen Lynn Woods filed this petition pursuant to 28 U.S.C. § 2254, asserting that his state court conviction and sentence were imposed in violation of the Constitution. Petitioner was convicted in Milwaukee County Circuit Court of three drug offenses. He was sentenced to five years' initial confinement and five years' extended supervision and is currently incarcerated at Racine Correctional Institution.

Pursuant to Rule 4 of the Rules Governing § 2254 Cases, I must give the case prompt initial consideration.

If it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Rule 4, Rules Governing § 2254 Cases. During my initial review of habeas petitions, I look to see whether the petitioner has set forth cognizable constitutional or federal law claims.

Petitioner claims that his counsel was ineffective because she gave him faulty advice in connection with his guilty plea. Petitioner states that if he was properly advised

he would not have pleaded guilty and would have insisted on going to trial. These are colorable constitutional claims, and therefore I will not dismiss the petition at this time.

Petitioner has also requested permission to proceed in forma pauperis. However, the filing fee for habeas cases is only \$5.00. A review of petitioner's affidavit and prison trust account statement shows that petitioner has \$205.19 in his account and no debts. Thus, petitioner can afford to pay the \$5.00 filing fee. Petitioner must pay this fee to the clerk of court within 21 days of the date of this order or this case will be dismissed for failure to pay the filing fee.

THEREFORE, IT IS ORDERED that within thirty (30) days of the date of this order respondent **ANSWER** the petition, complying with Rule 5 of the Rules Governing § 2254 Cases, and showing cause, if any, why the writ should not issue.

FURTHER, IT IS ORDERED that unless respondent files a dispositive motion with its answer the parties shall abide by the following schedule regarding the filing of briefs on the merits of petitioner's claims: (1) petitioner shall have forty-five (45) days following the filing of respondent's answer within which to file his brief in support of his petition; (2) respondent shall have forty-five (45) days following the filing of petitioner's initial brief within which to file a brief in opposition; and (3) petitioner shall have thirty (30) days following the filing of respondent's opposition brief within which to file a reply brief, if any.

In the event that respondent files a dispositive motion and supporting brief with its answer, this briefing schedule will be suspended and the briefing schedule will be as follows: (1) petitioner shall have forty-five (45) days following the filing of respondent's dispositive motion and supporting initial brief within which to file a brief in opposition; and

(2) respondent shall have thirty (30) days following the filing of petitioner's opposition brief within which to file a reply brief, if any.

Pursuant to Civil L.R. 7(f), the following page limitations apply: briefs in support of or in opposition to the habeas petition or a dispositive motion filed by respondent must not exceed thirty pages and reply briefs must not exceed fifteen pages, not counting any statements of facts, exhibits, and affidavits.

Petitioner is advised that he must send copies of all future filings with the court to counsel for respondent, no matter whether in letter, brief, memorandum, or other form. Until respondent files his or her answer, these copies should be sent to the Attorney General for the State of Wisconsin, c/o Gregory Weber, Assistant Attorney General, P.O. Box 7857, Madison, WI 53707.

FURTHER, IT IS ORDERED that a copy of the petition and this order be provided to respondent by service on the Attorney General for the State of Wisconsin.

FINALLY, IT IS ORDERED that petitioner's motion to proceed in forma pauperis is **DENIED**. This action will be dismissed unless petitioner pays the \$5.00 filing fee to the clerk of court within 21 days of the date of this order.

Dated at Milwaukee, Wisconsin, this 5 day of August, 2010.

/s _____
LYNN ADELMAN
District Judge